

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

SAMUEL MENDEZ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 05-35E
)	
PENNSYLVANIA DEPARTMENT OF)	Judge Sean J. McLaughlin
CORRECTIONS; PRISON HEALTH)	Magistrate Judge Susan Paradise Baxter
SERVICES, INC.; DR. MARK)	
BAKER; DR. FRAIDER)	
)	
)	
)	
Defendants.)	

MOTION OF DEFENDANT PENNSYLVANIA
DEPARTMENT OF CORRECTIONS FOR LEAVE
TO FILE RESPONSE TO AMENDED COMPLAINT
NUNC PRO TUNC

AND NOW comes the defendant, the Pennsylvania Department of Corrections, by its attorneys, Thomas W. Corbett, Jr., Attorney General, Robert A. Willig, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief, Litigation Section, and hereby submits the following:

1. The undersigned attorney was recently assigned the above captioned case. A review of the docket revealed that the Plaintiff filed an Amended Complaint on October 25, 2005 (See Doc. # 29). By Order dated November 3, 2005, this Court ordered the Defendants to file a response to Plaintiff's Amended Complaint on or before November 23, 2005 (See Text Order 11/03/2005). No response to Plaintiff's Amended Complaint

was filed on behalf of Defendant Pennsylvania Department of Corrections (hereinafter the State Defendant).

2. The State Defendant had previously filed a Motion to Dismiss and Brief in Support on October 7, 2005 (See Docs. # 16, 17) in response to Plaintiff's original complaint (See Doc # 3). The State Defendant argued that the 11th Amendment barred suit in this case and that Plaintiff's medical complaints failed to state a constitutional claim. Plaintiff's Amended Complaint raised no new claims relevant to the State Defendant; in fact, the Amended Complaint fails to mention the State Defendant at all. If anything, the Amended Complaint appears to withdraw the claims against the State Defendant.

3. The State Defendant is willing to rely on the arguments made in its original Motion to Dismiss and Brief in Support; however, if this Honorable Court wishes to have a further response from this Defendant, this Defendant asks for a brief extension of time in which to file such a response.

4. This Motion is not intended to, nor does it, prejudice Plaintiff in any way in light of the fact that the Amended Complaint contains no claims against the DOC. Moreover, as noted in the DOC's original Motion to Dismiss/Brief in Support, the DOC is not even a proper party to this action.

Respectfully submitted,

Thomas W. Corbett, Jr.
Attorney General

/s/ Robert A. Willig
ROBERT A. WILLIG
Senior Deputy Attorney General
Attorney I.D. No. 53581

Susan J. Forney
Chief Deputy Attorney General

Office of Attorney General
6th Floor, Manor Complex
564 Forbes Ave.
Pittsburgh, PA 15219
Phone: (412) 565-5696
Fax: (412) 565-3019

Date: April 19, 2006